

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
CLARKSBURG

METRO TOWERS, LLC,

Plaintiff,

v.

CIVIL ACTION NO. 1:20cv206  
(KLEEH)

MICHAEL C. DUFF and  
BARBARA C. LUDLOW,

Defendants.

**ORDER ADOPTING REPORT AND RECOMMENDATION [ECF NO. 51] AND  
DENYING PLAINTIFF'S MOTION TO STRIKE EXPERT [ECF NO. 35]**

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On December 30, 2021, Plaintiff Metro Towers, LLC ("Plaintiff") filed *Plaintiff's Motion to Strike Defendants' Expert Douglas M. Clark, P.E.* ECF No. 35. Pursuant to 28 U.S.C. § 636 and the local rules, the Court referred the motion to United States Magistrate Judge Michael J. Aloï (the "Magistrate Judge") for review and recommendation. ECF No. 37. On February 1, 2022, the Magistrate Judge entered a Report and Recommendation ("R&R"), recommending that the Court deny Plaintiff's motion to strike, allow Defendants to supplement their expert report, and permit Plaintiff to re-depose Defendants' expert. ECF No. 51.

The R&R informed Plaintiff that it had "fourteen (14) days after being served with a copy of th[e] Report and Recommendation [to] file with the Clerk of the Court specific written objections identifying the portions of the Report and Recommendation to which

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objection is made, and the basis for such objection." The R&R further informed Plaintiff that "[f]ailure to timely file objections . . . will result in waiver of the right to appeal from a judgment of this Court based upon such Report and Recommendation." The R&R was sent by electronic mail to counsel of record via the CM/ECF system. To date, no objections to the R&R have been filed.

When reviewing a magistrate judge's R&R, the Court must review de novo only the portions to which an objection has been timely made. 28 U.S.C. § 636(b)(1)(C). Otherwise, "the Court may adopt, without explanation, any of the magistrate judge's recommendations" to which there are no objections. Dellarciprete v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will uphold portions of a recommendation to which no objection has been made unless they are clearly erroneous. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

Because no party has objected, the Court is under no obligation to conduct a de novo review. Accordingly, the Court reviewed the R&R for clear error. Upon careful review, and finding no clear error, the Court **ADOPTS** the R&R [ECF No. 51] and **DENIES** *Plaintiff's Motion to Strike Defendants' Expert Douglas M. Clark, P.E.* [ECF No. 35]. Defendants are permitted to supplement Douglas

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Clark's expert report and Plaintiff is likewise permitted to re-depose Douglas Clark about the supplemental expert report, at Defendants' expense.

It is so **ORDERED**.

The Court **DIRECTS** the Clerk to transmit copies of this Order to counsel of record.

**DATED:** March 8, 2022

/s/ Thomas S. Klee  
THOMAS S. KLEE  
UNITED STATES DISTRICT JUDGE